

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
The Maytag Company :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9-A of the Tax Law for :
the Years 1968 - 1970. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of March, 1983, he served the within notice of Decision by certified mail upon The Maytag Company, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

The Maytag Company
c/o Edgar B. Trost
Tax Department
Newton, IA 50208

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
4th day of March, 1983.

David Parchuck

Charmie A. Hagedorn
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

March 4, 1983

The Maytag Company
c/o Edgar B. Trost
Tax Department
Newton, IA 50208

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
THE MAYTAG COMPANY	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Franchise Tax on a Business :	:	
Corporation under Article 9-A of the Tax	:	
Law for the Years 1968, 1969 and 1970.	:	

Petitioner, The Maytag Company, Tax Department, Newton, Iowa 50208, filed a petition for redetermination of a deficiency or for refund of franchise tax on a business corporation under Article 9-A of the Tax Law for the years 1968, 1969 and 1970 (File No. 16781).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York 12227, on August 11, 1977 at 1:15 P.M. Petitioner appeared by Edgar B. Trost, Assistant Controller. The Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether the notices of deficiency of franchise taxes due were timely issued for 1968, 1969 and 1970.

FINDINGS OF FACT

1. Petitioner, The Maytag Company ("Maytag"), timely filed franchise tax reports (Form CT-3) for 1968, 1969 and 1970. The final inquiries on page 1 of the CT-3 form were, "Has the Internal Revenue Service corrected any reported taxable income?" and "Have Forms CT-3360 [Report of Change in Taxable Income by U.S. Treasury Department] been filed?". For 1968 petitioner replied in the negative. For 1969 and 1970 petitioner answered both questions in the affirmative.

2. Attached to and made a part of the New York State franchise tax reports for 1968, 1969 and 1970, were copies of petitioner's U. S. Corporation Income Tax Returns (Form 1120).

3. On March 27, 1973, after audit of petitioner's Federal corporation income tax returns for 1968, 1969 and 1970, a Revenue Agent's Report (RAR) was issued by the Internal Revenue Service. Petitioner mailed a copy of the Revenue Agent's Report to the Corporation Tax Bureau on April 13, 1973.

4. On December 5, 1975, the Corporation Tax Bureau issued a statement of audit adjustment and notice of deficiency for 1968, 1969 and 1970 to petitioner, stating:

"As noted on the attached Notice of Deficiency, this amount will become an assessment subject to collection after 90 days....."

5. On February 27, 1976, petitioner filed a petition for redetermination of the franchise taxes allegedly due.

6. A field audit report of the Corporation Tax Bureau, dated October 10, 1975 and submitted in evidence at the formal hearing, showed receipt from Maytag of the Federal Revenue Agent's Report covering 1968, 1969 and 1970 on April 17, 1973. The auditor recommended the issuance of a Notice of Deficiency. He found additional franchise taxes due per the Federal audit as follows:

1968	\$12,302.57
1969	258.66
1970	3.92
TOTAL	<u>\$12,565.15</u>

7. Petitioner is a corporation organized in Delaware on August 15, 1925. Its home office is located in Newton, Iowa, which is also the location of all but one of its factories. Petitioner manufactures and distributes household appliances and repair parts. It is qualified to do business in 42 states.

Petitioner maintains a branch sales office in Williston Park, New York. It had about 25 employees in New York State during the period under

review, among them a number of resident salesmen who called on retail dealers in New York State. Petitioner also maintained inventories of household appliances in public warehouses in four cities in this State.

8. The Audit Division contended: a) that the submission of the Revenue Agent's Report did not constitute a "report" under section 1083(c)(3) of the Tax Law; and b) that such submission was, however, a "self-assessment" and accordingly the two-year statute of limitations set forth in section 1083(c)(3) did not apply.

CONCLUSIONS OF LAW

A. That petitioner's filing of the Revenue Agent's Report did not constitute the filing of a report as required by section 211, subdivision (3) of the Tax Law.

Where the amount of taxable income as reported by the corporate taxpayer to the Internal Revenue Service has been changed or corrected by the Service, the taxpayer is required to report such changed or corrected taxable income to the Tax Commission within 90 days after the final determination of the change or correction; further, the taxpayer must concede the accuracy of the determination or state wherein it is erroneous. Section 211.3. Former regulation section 5.10(a) provided in pertinent part, "Reports are required to be made on forms prescribed by the State Tax Commission... There is no special form for reporting changes in Federal taxable income...". When the cited regulation was promulgated by the Commission on March 14, 1962, Form CT-3360, Report of Change in Taxable Income by U.S. Treasury Department, was not in existence. However, the form was available during the years in question, and petitioner knew of its availability, as clearly shown by its answers to the inquiries on its franchise tax reports (Finding of Fact "1").

Consequently, an assessment arising from the federal changes could be made at any time. Section 1083(c)(1)(A).

B. That assuming arguendo that petitioner's submission of the Revenue Agent's Report constituted a sufficient filing under section 211.3, the deficiencies were still not time-barred. Where a taxpayer files a report or amended return as required by section 211.3, with respect to an increase in federal taxable income or federal tax, or with respect to a change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal tax purposes, "the assessment (if not deemed to have been made upon the filing of the report or amended return) may be made at any time within two years after such report or amended return was filed". Section 1083(c)(3). Petitioner, by its concession of the accuracy of the federal changes (petitioner failed to state wherein such changes were erroneous), self-assessed the franchise tax deficiency which resulted from such changes. The assessment was accordingly deemed made on the date of filing the report and was timely notwithstanding section 1083(c)(3). Section 1082(a).

C. That the portion of the petition of The Maytag Company, which raised the issue of the timeliness of the deficiencies, is hereby denied.

DATED: Albany, New York

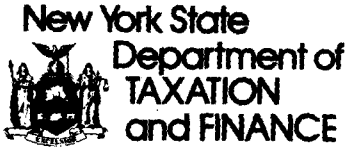
MAR 04 1983

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER



Tax Appeals Bureau

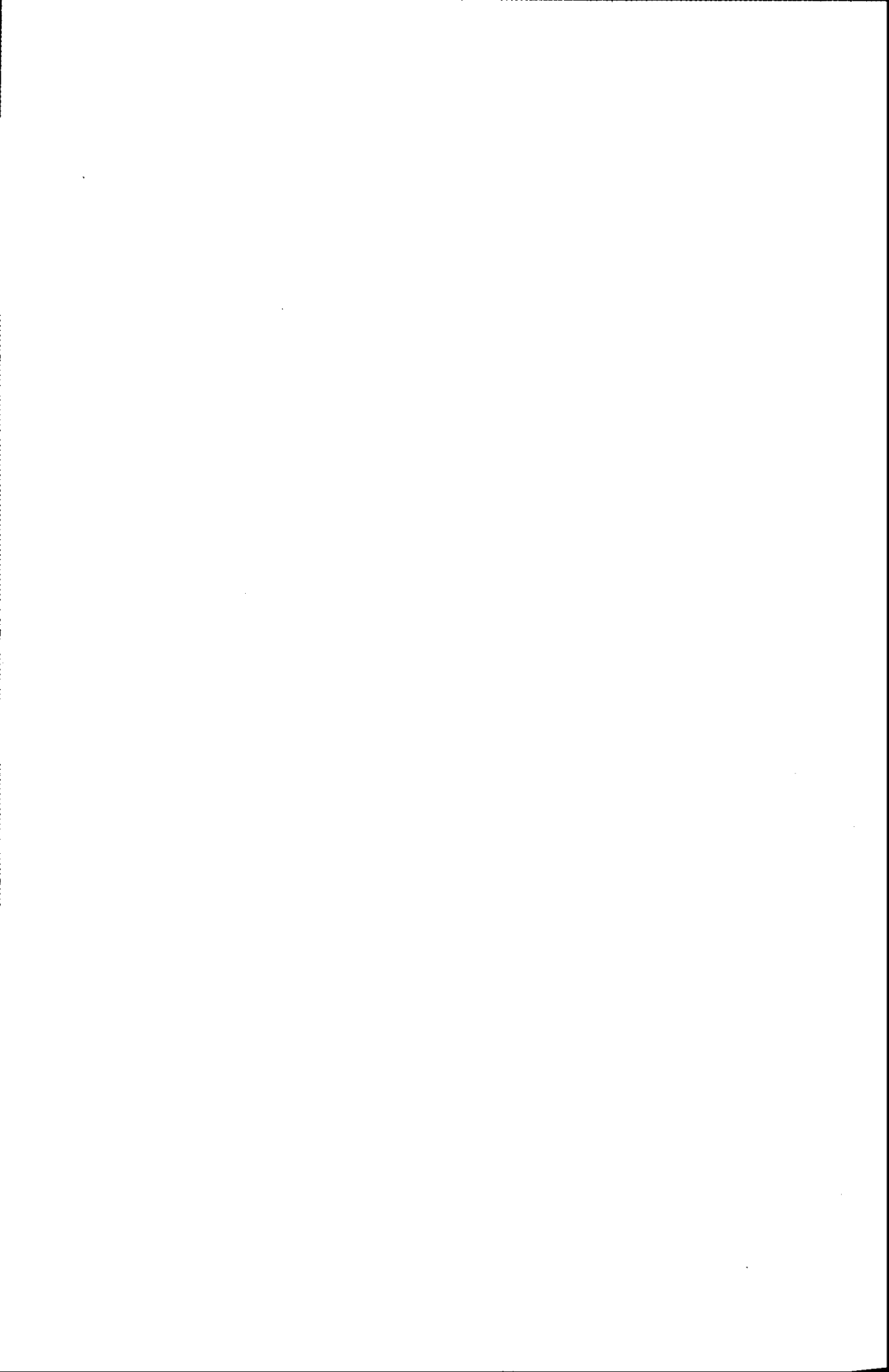
Date 3-4-83

To WFC

*Decision mailed please delete
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DISK: H

<u>STOP</u>	<u>DESCRIPTION</u>	<u>INFORMATION</u>	<u>CORRECTION</u>
1	OS ID NO	142	
3	TAB NO	16781	
4	CORP. OR LAST NAME	Maytag Co., The	THE MAYTAG Company
5	FIRST NAME		
6	MI		
7	SECOND NAME		
8	SALUTATION	Gentlemen	
9	STREET	Tax Dept.	Department of EDGAR B. TRIST.
10	SECOND LINE ADDRESS	Tax Department	
11/12/13	CITY, STATE, ZIP	Newton, Iowa 50208	
14	DATE RECEIVED	76/10/28	
15	PETITION DATE	76/02/27	
16	ARTICLE NO	9-A	
17	ARTICLE NAME	Corporation Franchise Tax	
18	AMT AT ISSUE	\$12,565.75	
19	YEAR YEARS PERIOD	Years	
20	DATE OF YR OR PERIOD	1968 - 1970	
21	ID - SS#		
22/23/24	REPS NAME		
25	POWER OF ATTORNEY		
26	TITLE		
27	FIRM NAME		
28	STREET		
29/30/31	CITY STATE ZIP		
32	ASSOC CASE		
33	DISTRICT OFFICE	Albany	